

ESTTA Tracking number: **ESTTA485217**Filing date: **07/24/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91199109
Party	Plaintiff Calpis Co., Ltd.
Correspondence Address	ROBERT BG HOROWITZ BAKER AND HOSTETLER LLP 45 ROCKEFELLER PLAZA NEW YORK, NY 10111 UNITED STATES rhorowitz@bakerlaw.com, dtobin@bakerlaw.com, ejoyce@bakerlaw.com, trademarks@bakerlaw.com, jlozada@bakerlaw.com
Submission	Motion to Compel Discovery
Filer's Name	Donna A. Tobin
Filer's e-mail	dtobin@bakerlaw.com
Signature	/Donna A. Tobin/
Date	07/24/2012
Attachments	Opposer's Motion to Compel Responses to Discovery Requests from Applicant and to Reset All Dates.pdf (7 pages)(547525 bytes) Exhibit 1.pdf (10 pages)(716609 bytes) Exhibit 2.pdf (11 pages)(722544 bytes) Exhibit 3.pdf (22 pages)(3369320 bytes) Exhibit 4.pdf (2 pages)(84815 bytes) Exhibit 5.pdf (2 pages)(93669 bytes) Exhibit 6.pdf (3 pages)(184538 bytes) Exhibit 7.pdf (10 pages)(743901 bytes) Exhibit 8.pdf (11 pages)(745848 bytes) Exhibit 9.pdf (22 pages)(4217096 bytes) Exhibit 10.pdf (2 pages)(144551 bytes) Exhibit 11.pdf (2 pages)(100145 bytes) Exhibits 12A + B.pdf (3 pages)(217231 bytes) Exhibits 13A + B.pdf (2 pages)(120790 bytes) Exhibits 14A + B.pdf (2 pages)(119245 bytes) Exhibits 15A + B.pdf (4 pages)(328735 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CALPIS CO., LTD.)	
)	
Opposer,)	
)	
v.)	Opposition Nos. 91199109 and
)	91199111
)	
CALICO JACK'S L.L.C.)	
)	
Applicant.)	

**OPPOSER'S MOTION TO COMPEL RESPONSES TO DISCOVERY
REQUESTS FROM APPLICANT AND TO RESET ALL DATES**

Opposer CALPIS CO. ("Opposer") hereby brings this motion pursuant to Rule 37 F.R.Civ.P. to compel Applicant to respond to Opposer's discovery requests and for a rescheduling of all dates, as more fully set forth below. Opposer also requests that Opposer's Requests to Admit, to which Applicant essentially served no responses, be deemed admitted pursuant to Fed. R. Civ. P. Rule 36(a)(6).

Opposer certifies, pursuant to 37 C.F.R. Section 2.120(e)(1), that its counsel has made a good faith effort by correspondence with Applicant to resolve the issues put forth in this motion and the parties have not been able to resolve their differences.

A. Case Background:

This consolidated opposition proceeding was commenced by CALPIS CO., owner of the well-known marks CALPICO and CALPICO SODA for beverages against registration by Applicant CALICO JACK'S L.L.C. of the marks CALICO and design (Application SN 85/077,274) for "Energy drinks; Fruit drinks and fruit juices; Fruit

flavored soft drinks; Fruit-based soft drinks flavored with tea; Guarana drinks; Isotonic drinks; Pop; Powders used in the preparation of isotonic sports drinks and sports beverages; Soft drinks; Sports drinks; Sports drinks, namely, energy drinks; Syrups for making soft drinks” and CALICO JACK’S (Application SN 85/121,744) for “Colas; Concentrates, syrups or powders used in the preparation of soft drinks; Energy drinks; Fruit drinks and juices; Guarana drinks; Isotonic drinks; Isotonic non-alcoholic drinks; Non-alcoholic cocktails; Powders used in the preparation of isotonic sports drinks and sports beverages; Sports drinks; Syrups for making non-alcoholic beverages.”

On April 2, 2012, Opposer served upon Applicant its First Set of Interrogatories, First Set of Requests For Admission and First Set of Document Requests to Applicant. Copies are attached to this motion as Exhibits 1, 2 and 3 respectively.

Responses were due from Applicant on May 7, 2012. On June 15, 2012, counsel for Opposer wrote to Applicant by electronic mail and informed him that no answers to Opposer's discovery had been received. (Exhibit 4). On June 18, counsel for Opposer and Applicant had a telephone conference during which Applicant indicated he never received Opposer's discovery requests. Opposer confirmed that the requests had been mailed to Applicant's address of record and that they had not been returned by the US Postal Service. Nonetheless, Opposer's counsel re-sent the requests by electronic mail on June 18, 2012 and requested that Applicant agree to a 60-day extension of the discovery period to accommodate the delay in Applicant's responses. (Exhibit 5). On the following day Applicant served alleged responses to Opposer's discovery requests and did not agree to any extensions. (Exhibit 6).

The “responses” provided by Applicant to each and every document request, request for admission and interrogatory served by Opposer are the same, namely “PLEAD THE FIFTH.” Applicant’s “Responses” and attached hereto. (Exhibits 7, 8 and 9). On June 28, 2012, Opposer’s counsel had a telephone call with Applicant and explained the insufficiency of his “responses” and requested sufficient responses. Opposer’s counsel also indicated that in the event responses were not received within a week’s time, a Motion to Compel would be filed. (Exhibit 10). Subsequently, Applicant made several settlement proposals which were unacceptable to Opposer. On July 10, Opposer’s counsel replied that Opposer was not interested in Applicant’s proposed settlement options and again requested appropriate responses to Opposer’s outstanding discovery requests. (Exhibit 11). In response Applicant sent an email to Opposer’s counsel stating “Please do not contact me personally If you have any questions please go through the USPTO.” (Exhibit 12A). Opposer’s counsel responded, advising that under the applicable rules personal contact was permitted in certain circumstances. (Exhibit 12B). Another telephone conversation took place, during which settlement was again discussed, and Opposer’s counsel again requested an extension to the discovery period and adequate responses to its discovery requests.

In response, on July 12, 2012, Applicant sent a link to a YouTube video – <http://www.youtube.com/watch?v=L6j9Sw1YUf8&feature=related> --comprising lewd material. (Exhibit 13A). Opposer’s counsel once again requested agreement on an extension of the discovery period and an answer as to whether Applicant would be serving discovery responses. (Exhibit 13B). Several days later, on July 20, Opposer sent an email to Applicant outlining a settlement offer that Opposer had approved. In response,

Applicant sent a link to a YouTube video clip from the horror movie Saw – <http://www.youtube.com/watch?v=wLlut9sqkR0>, which comprised only the phrase “Live or Die... Make Your Choice.” (Exhibit 14A). Opposer’s counsel requested clarification. (Exhibit 14B). In response, Applicant sent a link to a YouTube clip – <http://www.youtube.com/watch?v=QB-eCryRofl&feature=fvwrel--> from the horror film “House of a 1000 Corpses.” (Exhibit 15A). Both YouTube clips obviously are of a threatening nature against Opposer’s counsel. In response, Opposer’s counsel informed Applicant that a motion to compel would be filed. (Exhibit 15 B). Applicant has provided no further response, nor has it provided any sufficient response whatsoever to Opposer’s discovery requests.

B. The Deficiencies in Applicant’s Responses.

Clearly, “PLEAD THE FIFTH” is not an adequate response to any of the 26 Interrogatories, 33 Document Requests and 83 Requests to Admit served by Opposer upon Applicant. The responses, which are evasive and non-responsive, are also entirely inappropriate, as this proceeding is not a criminal case, nor could any responses to Opposer’s requests subject Applicant to criminal prosecution, as they all relate to Applicant’s use of the marks it seeks to register, and related issues.

ARGUMENT

The answers to the Interrogatories, Requests to Admit and Document Requests at issue here which were provided by Applicant are evasive and entirely insufficient and are the equivalent of a failure to disclose. Fed. R. Civ. P. 26(g) and 37(a)(3).

Opposer requests that the Board issue an Order compelling Applicant to provide complete responses to the Interrogatories and Document Requests served by Opposer. In the absence of compliance, Opposer requests that Applicant be precluded from relying at trial on information from its records which Opposer sought in the Interrogatories and document requests at issue here. See, Bison Corp. v. Perfecta Chemie B.V., 4 USPQ2d 1718 (TTAB 1987); and TBMP §408.02.

Opposer also requests that the Requests to Admit, to which Applicant essentially served no responses, be deemed admitted pursuant to Fed. R. Civ. P. Rule 36(a)(6) as Rule 36(a)(3) clearly provides “[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney”. Here, Opposer served the Requests to Admit to Applicant’s address of record and they were not returned by the Postal Service, and Applicant’s 30 day response passed without any responses being served by Applicant.

Should the Board not agree that Opposer’s Requests for Admission are deemed admitted, then Opposer requests that Applicant be compelled to provide amended, and sufficient, responses pursuant to Fed. R. Civ. P. Rule 36(a)(6).

Opposer also requests that the Board extend all discovery and trial deadlines set forth in Opposer's motion dated March 5, 2012 and the Board's Order of March 16, 2012 by an amount of time equal to the length of time it takes the Board to issue an order in connection with this motion, plus an additional sixty days.

Dated: July 24, 2012

BAKER & HOSTETLER LLP

By: 

Robert B.G. Horowitz

Donna A. Tobin

45 Rockefeller Plaza, 14th Floor

New York, New York 10111

(212) 589-4200

Attorneys for Opposer

Calpis Co., Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion was served on July 24, 2012 by

First Class Mail, postage prepaid, in an envelope addressed to Applicant as follows:

CALICO JACKS LLC
19 AUTUMN LANE
CARRIERE, MS 39426 7070

CALICO JACKS LLC
501 North Jeff Davis Pkwy
P.O. Box 791076
New Orleans, Louisiana 70119.

A handwritten signature in cursive script, reading "Ana Zapata", is written over a solid horizontal line.

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CALPIS CO., LTD.)	
)	
Opposer,)	
)	Consolidated
v.)	Opposition Nos. 91199109 and
)	91199111
)	
CALICO JACK'S L.L.C)	
)	
Applicant.)	

OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT

Opposer CALPIS CO., LTD. ("Opposer") hereby requests that Applicant CALICO JACK'S L.L.C. ("Applicant") in accordance with Rule 34, F.R.Civ.P., and 37 C.F.R. § 2.120, produce for inspection and copying the below requested documents and things. The documents and things shall be produced within thirty (30) days after service hereof at the offices of BAKER & HOSTETLER LLP, New York, New York 10111, or at such other time and place agreed upon by counsel.

DEFINITIONS

A. As used herein, the terms "Applicant" includes CALICO JACK'S L.L.C., its predecessors in interest, and any business entities, agents, individuals or entities who act or have acted or who purport to act or have purported to act, on its behalf, including but not limited to Mr. Sidney Martin.

B. As used herein, the term "Opposer" includes CALPIS CO., LTD., its predecessors in interest, and all of its subsidiaries and affiliated companies.

C. As used herein, the "Applicant's marks" and "the Marks" includes any and all marks comprising CALICO alone or in combination with another mark, element or component, or any similar mark, including but not limited to the marks set forth in Applicant's trademark applications which are the subject of these proceedings.

D. As used herein, "CALPICO Marks" are defined as CALPICO, CALPICO WATER and CALPICO SODA, as referred to in the Notices of Opposition filed in this matter.

E. As used herein, the term "documents" includes, but is not limited to, all writings, emails, facsimiles, summaries, minutes and records of in-person or telephone conversations, meetings and conferences, notes, notations, communications, correspondence, invoices, contracts, purchase orders, statements, bills, checks, agreements, memoranda of understanding, memoranda, books, pamphlets, publications, assignments, licenses, studies, reports, labels, packaging, artwork, advertisements, tear sheets, manuals, circulars, press releases, catalogs, flyers, brochures, proofs, displays, photographs, videotapes, models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form, and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process and includes all drafts, originals, masters and non-identical copies.

F. As used herein, the terms "identify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Applicant, whether or not in the possession of Applicant and whether or not alleged to be privileged, including the following information:

1. In the case of a person, his/her full name, address, job title and present employer;
2. In the case of a company, firm, corporation or association, its name, business address and identity of persons having knowledge of the matter about which the company is named;

3. In the case of a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender; and

4. In the case of printed material, its title, author, publication date, volume and the relevant page numbers. The term "person" shall mean and include any natural person, business organization or entity such as corporation, partnership or the like.

G. In the following document requests, if a privilege is alleged as to information or materials or if a document request is otherwise not answered in full, state the specific grounds for not answering in full and answer said document request to the extent to which it is not objected, including the identification of all information or materials for which privilege is claimed and the specific nature of any such privilege.

H. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents which might otherwise be construed to be outside its scope.

I. As used herein, the singular shall include the plural, and the present tense shall include the past tense.

J. The term "referring or relating to" includes responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, constituting, and forming a basis for.

K. The following document requests shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these document requests which Applicant acquires or which becomes known to Applicant up to and including the time of trial shall be furnished to Opposer immediately after such information is first acquired or becomes known.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1

All documents and things requested to be identified in, or used as the basis for answering, Opposer's First Set of Interrogatories to Applicant.

DOCUMENT REQUEST NO. 2

One sample of each type of goods advertised, made, distributed, offered for sale or sold by Applicant at any time in connection with each of the Marks.

DOCUMENT REQUEST NO. 3

All documents referring to, relating to or reflecting purchase and/or importation into the United States of goods or materials used to produce the goods sold in connection with each of the Marks by or on behalf of Applicant.

DOCUMENT REQUEST NO. 4

All documents referring to, relating to or reflecting Applicant's first use of each of the Marks (a) anywhere; and (b) in interstate commerce.

DOCUMENT REQUEST NO. 5

All documents referring to, relating to or reflecting the sale and/or distribution of goods in connection with each of the Marks by or on behalf of Applicant, including but not limited to purchase orders, invoices and correspondence.

DOCUMENT REQUEST NO. 6

All documents referring to, relating to or reflecting the production of goods sold in connection with each of the Marks by or on behalf of Applicant.

DOCUMENT REQUEST NO. 7

All licenses, approvals, consents or the like granted to or received by Applicant which refer or relate to each of the Marks.

DOCUMENT REQUEST NO. 8

All documents referring to, relating to, reflecting or comprising searches or investigations conducted by or on behalf of Applicant concerning each of the Marks.

DOCUMENT REQUEST NO. 9

All documents referring to, relating to or reflecting Applicant's creation, adoption or development of each of the Marks.

DOCUMENT REQUEST NO. 10

All advertising, informational and promotional materials, articles and press releases, referring or relating to each of Applicant's Marks.

DOCUMENT REQUEST NO. 11

All documents referring to, relating to, reflecting or comprising materials or sources of information used by Applicant in connection with the prosecution of the trademark applications that are the subject of these proceedings including any materials or sources of information used in connection with preparing specimens .

DOCUMENT REQUEST NO. 12

All opinions obtained by or on behalf of Applicant in connection with adoption, application for registration and/or use of each of the Marks.

DOCUMENT REQUEST NO. 13

All documents and things in Applicant's possession, custody or control which refer or relate in any manner to Opposer or to Opposer's use of its CALPICO Marks.

DOCUMENT REQUEST NO. 14

All documents referring to, relating to, reflecting or comprising registrations or applications to register each of the Marks, including as a domain name, filed by or on behalf of, or awarded to Applicant anywhere.

DOCUMENT REQUEST NO. 15

All documents referring to, relating to, reflecting or comprising business plans or market research created or conducted by Applicant relating to goods sold in connection with each of the Marks.

DOCUMENT REQUEST NO. 16

All documents referring to, relating to or reflecting the sources of goods sold or to be sold by or on behalf of Applicant in connection with each of the Marks.

DOCUMENT REQUEST NO. 17

All documents referring to, relating to or reflecting prior litigation or legal proceedings to which Applicant has been or is a party.

DOCUMENT REQUEST NO. 18

All documents referring to, relating to or reflecting the source or sources of ingredients, including flavorings, used in Applicant's goods sold in connection with each of the Marks.

DOCUMENT REQUEST NO. 19

All documents referring to, relating to or reflecting use of the Marks by affiliates, agents, related companies or family relations of Applicant.

DOCUMENT REQUEST NO. 20

All documents relating to the target customers for Applicant's goods sold or offered for sale in connection with each of the Marks.

DOCUMENT REQUEST NO. 21

All documents referring to, relating to or reflecting Applicant's sales or annual revenue in unit and dollar volumes, in connection with each of the Marks.

DOCUMENT REQUEST NO. 22

All documents referring to, relating to, or reflecting Applicant's advertising and promotional expenses in connection with each of the Marks.

DOCUMENT REQUEST NO. 23

All documents referring to, relating to, reflecting or evidencing confusion between Applicant's use of each of the Marks and Opposer's use of its CALPICO mark.

DOCUMENT REQUEST NO. 24

One sample of each type of packaging, including containers, boxes, labels and tags, used presently or in the past six years, or which Applicant intends to use in connection with goods advertised, made, distributed, offered for sale or sold by Applicant in connection with each of the Marks.

DOCUMENT REQUEST NO. 25

All documents referring or relating to the taste or flavor of Applicant's goods sold or distributed in connection with each of the Marks.

DOCUMENT REQUEST NO. 26

All documents referring to or relating to a drink or a flavor called or named CALICO JACK or any similar name.

DOCUMENT REQUEST NO. 27

All documents including but not limited to contracts and invoices, referring or relating to the individuals or entities who created: a) the labels shown in the specimens of use submitted to the USPTO by Applicant for the opposed trademark applications; and, b) any other labels used by Applicant in connection with the actual sale or distribution of goods.

DOCUMENT REQUEST NO. 28

All documents including but not limited to contracts and invoices, referring to or relating to the individuals or entities who created the packaging: a) shown in the specimens of use submitted to the USPTO by Applicant for the oppose trademark applications; and, b) used by Applicant in connection with the actual sale or distribution of goods.

DOCUMENT REQUEST NO. 29

All documents referring or relating to the alcohol content in Applicant's goods sold in connection with each of the Marks.

DOCUMENT REQUEST NO. 30

All documents referring or relating to Applicant's obtaining approval from Bureau of Alcohol, Tobacco and Firearms to use the Marks in connection with an alcoholic beverage.

DOCUMENT REQUEST NO. 31

All documents referring or relating to the geographic location(s) a) from which Applicant has shipped goods sold in packaging bearing each of the Marks; and b) of Applicant's customers to whom it has shipped goods bearing the Marks.

DOCUMENT REQUEST NO. 32

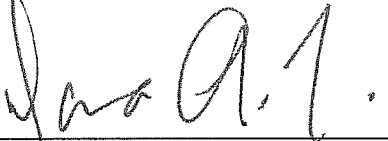
All documents referring or relating to the amounts: a) Applicant has paid its source(s) for the goods sold in connection with the Marks; and, b) Applicant charges its customers for goods sold in connection with the Marks.

DOCUMENT REQUEST NO. 33

All documents referring or relating to any criminal records of Applicant's owner, Mr. Sidney J. Martin.

Dated: April 2, 2012

BAKER & HOSTETLER LLP

By: 

Robert B.G. Horowitz
Donna A. Tobin
45 Rockefeller Plaza
New York, New York 10111
(212) 589-4200
Attorneys for Opposer
Calpis Co., Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT was served on April 2, 2012 by first class mail, postage prepaid, in an envelope addressed to Applicant as follows:

Calico Jack's LLC
Attn: Sidney J. Martin
19 Autumn Lane
Carriere, MS 39426-7070

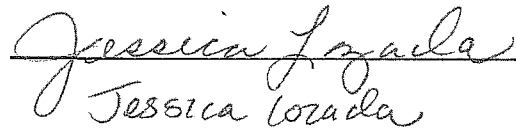

Jessica Lozada

EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CALPIS CO., LTD.

Opposer,

v.

CALICO JACK'S L.L.C.

Applicant.

Consolidated
Opposition Nos. 91199109
91199111

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer CALPIS CO., LTD. ("Opposer") hereby requests that Applicant CALICO JACK'S L.L.C. ("Applicant") answer the following interrogatories under oath, pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, within thirty (30) days of the date hereof.

DEFINITIONS

- A. As used herein, the terms "Applicant" and "Calico Jack's L.L.C." include CALICO JACK'S L.L.C., its predecessors in interest, and any business entities, agents, individuals or entities who act or have acted or who purport to act or have purported to act, on its behalf.
- B. As used herein, the term "Opposer" includes Calpis Co., Ltd., its predecessors in interest, and all of its subsidiaries and affiliated companies.
- C. As used herein, the "Applicant's marks" and "the Marks" includes any and all marks comprising CALICO and/or CALICO JACK'S alone or in combination with another mark, element or component, or any similar mark, including but not limited to

the marks set forth in Applicant's trademark applications which are the subject of these proceedings.

D. As used herein, the term "documents" includes, but is not limited to, all writings, emails, facsimiles, summaries, minutes and records of in-person or telephone conversations, meetings and conferences, notes, notations, communications, correspondence, invoices, contracts, purchase orders, statements, bills, checks, agreements, memoranda of understanding, memoranda, books, pamphlets, publications, assignments, licenses, studies, reports, labels, packaging, artwork, advertisements, tear sheets, manuals, circulars, press releases, catalogs, flyers, brochures, proofs, displays, photographs, videotapes, models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form, and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process and includes all drafts, originals, masters and non-identical copies.

E. As used herein, the terms "identify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Applicant, whether or not in the possession of Applicant and whether or not alleged to be privileged, including the following information:

1. In the case of a person, his/her full name, address, job title and present employer;

2. In the case of a company, firm, corporation or association, its name, business address and identity of persons having knowledge of the matter about which the company is named.

3. In the case of a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender; and

4. In the case of printed material, its title, author, publication date, volume and the relevant page numbers. The term "person" shall mean and include any natural person, business organization or entity such as corporation, partnership or the like.

F. In the following interrogatories, if a privilege is alleged as to information or materials or if an interrogatory is otherwise not answered in full, state the specific grounds for not answering in full and answer said interrogatory to the extent to which it is not objected, including the identification of all information or materials for which privilege is claimed and the specific nature of any such privilege.

G. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents which might otherwise be construed to be outside its scope.

H. As used herein, the singular shall include the plural, and the present tense shall include the past tense.

I. The term "referring or relating to" includes responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, constituting, and forming a basis for.

J. The following interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating

in anyway to these interrogatories which Applicant acquires or which becomes known to Applicant up to and including the time of trial shall be furnished to Opposer immediately after such information is first acquired or becomes known.

D. As used herein, "CALPICO Marks" are defined as CALPICO, CALPICO WATER and CALPICO SODA, as referred to in the Notices of Opposition filed in this matter.

INTERROGATORIES

INTERROGATORY No. 1.

State Sidney Martin's (a) current address; (b) current occupation; (c) educational and business history, including any degrees earned; and, (d) his experience, if any, in connection with the goods listed in its trademark applications that are the subject of these proceedings and the industry in which such goods are sold.

INTERROGATORY NO. 2.

State whether Applicant has a written business plan for the Marks and, if so, identify the date thereof and all persons who participated in the creation and writing of the plan.

INTERROGATORY NO. 3.

Identify all goods sold by Applicant in association with the Marks at any time, specifying each such mark as applied to such goods, and stating the time periods during which each of such goods and/or services were sold or rendered.

INTERROGATORY NO. 4.

For each of the goods and services identified in both of Applicant's trademark applications which are the subject of these oppositions, state when Applicant first adopted and/or used each mark in connection therewith.

INTERROGATORY NO. 5.

Identify the types of sales outlets in which Applicant sells goods in connection with each of the Marks, including but not limited to the approximate size of such sales outlets, the nature and geographic locations of such sales outlets and whether such sales outlets will be operated under each of the Marks or other marks.

INTERROGATORY NO. 6.

Identify the actual and intended purchasers of goods sold by Applicant in connection with each of the Marks.

INTERROGATORY NO. 7.

Identify the source(s) of supply of the goods identified in Applicant's trademark applications that are the subject of these opposition proceedings and all goods sold by Applicant in connection with each of the Marks.

INTERROGATORY NO. 8.

Identify the individuals and/or entities who have assisted or who will assist Applicant in selling goods in connection with each of the Marks.

INTERROGATORY NO. 9.

Separately for each of the goods in connection with which each of the Marks has been used, state whether there has been any interruption in the use of the Marks by Applicant and state the dates of interruption and resumption of use, if any.

INTERROGATORY NO. 10.

State on an annualized basis the amount of Applicant's unit and dollar sales of goods sold in association with each of the Marks.

INTERROGATORY NO. 11.

State the amount or projected amount of Applicant's advertising and promotional expenditures in connection with each of the Marks.

INTERROGATORY NO.12.

State the methods of advertising and promotion in which Applicant has engaged in connection with goods bearing each of the Marks.

INTERROGATORY NO.13.

Identify any trade shows in which Applicant has displayed, promoted or exhibited goods bearing the Marks and identify any trade shows in which Applicant intends to display, promote or exhibit goods bearing the Marks.

INTERROGATORY NO. 14.

Identify the individual(s) responsible for the creation and/or adoption of the Marks by or on behalf of Applicant and state the dates of such creation and/or adoption.

INTERROGATORY NO. 15.

Identify the individual(s) involved in the decision to adopt the Marks.

INTERROGATORY NO. 16.

Describe the circumstances surrounding the creation and/or adoption of the Marks by or on behalf of Applicant.

INTERROGATORY NO. 17.

Identify the reason(s) and purpose for Applicant's adoption of the Marks.

INTERROGATORY NO. 18.

Identify the operators of all newspapers, trade journals, magazines, radio, television and other media outlets with whom Applicant has discussed use or advertising of the Marks.

INTERROGATORY NO. 19.

Identify all individuals and entities who have assisted or will assist Applicant in connection with use of the Marks.

INTERROGATORY NO. 20.

State any and all efforts made by Applicant to determine whether the Marks could legally be used by Applicant in connection with the goods described in its trademark applications that are the subject of these proceedings, including but not limited to the conducting of any trademark searches or seeking of legal advice.

INTERROGATORY NO. 21.

Identify the actual and potential source(s) or vendor(s) of goods sold or to be sold by Applicant in connection with the Marks.

INTERROGATORY NO. 22.

Describe in detail all instances of actual confusion known to Applicant between the source of Opposer's goods and/or services and any goods sold or services rendered by Applicant in connection with the Marks.

INTERROGATORY NO. 23.

Identify and describe the channels of advertising, promotion and trade in the United States for each of the goods and services Applicant sells or renders or intends to sell or render in connection with the Marks.

INTERROGATORY NO. 24.

Identify all individuals and entities which have distributed goods in connection with the Marks, including the name and address of each individual or entity.

INTERROGATORY NO. 25.

State whether Applicant's Owner, Mr. Sidney J. Martin, ever has been convicted of a crime and if so, please state the date(s) and nature of such conviction(s).


INTERROGATORY NO. 26.

State whether the term "CALICO JACK" has any significance or meaning in the field of drinks and spirits and if so, describe such significance or meaning.

Dated: April 2, 2012

By:

BAKER & HOSTETLER LLP



Robert B.G. Horowitz
Donna A. Tobin
45 Rockefeller Plaza
New York, New York 10111
(212) 589-4200
Attorneys for Opposer
Calpis Co., Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served on April 2, 2012 by first class mail, postage prepaid, in an envelope addressed to Applicant as follows:

Calico Jack's LLC
Attn: Sidney J. Martin
19 Autumn Lane
Carriere, MS 39426-7070

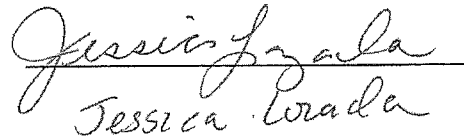

Jessica Prada

EXHIBIT 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CALPIS CO., LTD.)	
)	
Opposer,)	
)	
v.)	Consolidated
)	Opposition Nos. 91199109 and
)	91199111
)	
CALICO JACK'S L.L.C)	
)	
Applicant.)	

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Opposer CALPIS CO., LTD. ("Opposer") hereby requests that Applicant CALICO JACK'S L.L.C. ("Applicant") pursuant to Rule 36 of the Federal Rules of Civil Procedure, admit, for purposes of the pending action only, the truth of the following facts, application of law to fact or opinions concerning either and the genuineness of any described document within thirty (30) days after service hereof at the offices of BAKER & HOSTETLER LLP, New York, New York 10111, or at such other time and place agreed upon by counsel.

DEFINITIONS

The following definitions are applicable to terms employed in these Requests.

1. As used herein, the term "Opposer" includes CALPIS CO., LTD., its predecessors in interest, and all of its subsidiaries and affiliated companies.

2. As used herein, the terms "Applicant" includes CALICO JACK'S L.L.C., its predecessors in interest, and any business entities, agents, individuals or entities who act or

have acted or who purport to act or have purported to act, on its behalf, including but not limited to Mr. Sidney Martin.

3. As used herein, the "Applicant's marks" and "the Marks" includes any and all marks comprising CALICO alone or in combination with another mark, element or component, or any similar mark, including but not limited to the marks set forth in Applicant's trademark applications which are the subject of these proceedings.

4. As used herein, the word "commerce" has the definition in 15 U.S.C. Section 1127.

REQUEST FOR ADMISSIONS

REQUEST NO. 1

Applicant has never sold goods in connection with the Mark shown in its Application Serial No. 85121744.

REQUEST NO. 2

Applicant has never distributed goods in connection with the Mark shown in its Application Serial No. 85121744.

REQUEST NO. 3

If Applicant has sold goods in connection with the Mark shown in its Application Serial No. 85121744 such sales have been made only to customers within Louisiana.

REQUEST NO. 4

If Applicant has distributed goods in connection with the Mark shown in its Application Serial No. 85121744 such goods have been distributed only to customers within Louisiana.

REQUEST NO. 5

Applicant has never sold goods in connection with the Mark shown in its Application Serial No. 85077274.

REQUEST NO. 6

Applicant has never distributed goods in connection with the Mark shown in its Application Serial No. 85077274.

REQUEST NO. 7

If Applicant has sold goods in connection with the Mark shown in its Application Serial No. 85077274 such sales have been made only to customers within Mississippi.

REQUEST NO. 8

If Applicant has distributed goods in connection with the Mark shown in its Application Serial No. 85077274 such goods have been distributed only to customers within Mississippi.

REQUEST NO. 9

Applicant has only sold alcoholic beverages in connection with the Mark shown in its Application Serial No. 85121744.

REQUEST NO. 10

Applicant has only sold alcoholic beverages in connection with the Mark shown in its Application Serial No. 85077274.

REQUEST NO. 11

Applicant has never sold non-alcoholic beverages in connection with the Mark shown in its Application Serial No. 85121744.

REQUEST NO. 12

Applicant has never sold non-alcoholic beverages in connection with the Mark shown in its Application Serial No. 85077274.

REQUEST NO. 13

The term "Calico Jack" is a generic term for a particular alcoholic drink.

REQUEST NO. 14

The term "Calico Jack" is a generic term for a particular alcoholic drink which contains lemon juice, dark rum and a sweetener.

REQUEST NO. 15

Applicant's drinks sold under the Marks taste similar to a particular alcoholic drink known as a Calico Jack.

REQUEST NO. 16

Applicant's drinks sold under the Marks contain flavorings which also are used in a particular alcoholic drink known as a Calico Jack.

REQUEST NO. 17

Applicant's drinks sold under the Marks contain flavorings of the type which are also used by third parties in a particular alcoholic drink known as a Calico Jack.

REQUEST NO. 18

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant has never used on goods distributed in commerce.

REQUEST NO. 19

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant created for the purpose of providing a specimen to support its application.

REQUEST NO. 20

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant created.

REQUEST NO. 21

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant made out of paper.

REQUEST NO. 22

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant taped to a can.

REQUEST NO. 23

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 was created by Applicant from a can used for alcoholic beverages.

REQUEST NO. 24

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant has never used on goods distributed in commerce.

REQUEST NO. 25

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant created for the purpose of providing a specimen to support its application.

REQUEST NO. 26

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant created.

REQUEST NO. 27

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant made out of paper.

REQUEST NO. 28

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant taped to a can.

REQUEST NO. 29

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 was created by Applicant from a can used for alcoholic beverages.

REQUEST NO. 30

Applicant submitted a statement in its Application Serial No. 85077274 that the specimen submitted in connection therewith showed the mark "as used in commerce."

REQUEST NO. 31

Applicant submitted a signed Declaration in its Application Serial No. 85077274 in which it stated that all statements made therein were true.

REQUEST NO. 32

The statement made by Applicant in its Application Serial No. 85077274 that the specimen submitted in connection therewith showed the mark "as used in commerce" was false when made.

REQUEST NO. 33

The statement made by Applicant in its Application Serial No. 85077274 that the specimen submitted in connection therewith showed the mark "as used in commerce" was knowingly made.

REQUEST NO. 34

The statement made by Applicant in its Application Serial No. 85077274 that the specimen submitted in connection therewith showed the mark "as used in commerce" was made by Applicant to induce authorized agents of the United States Patent and Trademark Office to grant a registration on that application to Applicant.

REQUEST NO. 35

Applicant submitted a statement in its Application Serial No. 85121744 that the specimen submitted in connection therewith showed the mark "as used in commerce."

REQUEST NO. 36

Applicant submitted a signed Declaration in its Application Serial No. 85121744 in which it stated that all statements made therein were true.

REQUEST NO. 37

The statement made by Applicant in its Application Serial No. 85121744 that the specimen submitted in connection therewith showed the mark "as used in commerce" was false when made.

REQUEST NO. 38

The statement made by Applicant in its Application Serial No. 85121744 that the specimen submitted in connection therewith showed the mark "as used in commerce" was knowingly made.

REQUEST NO. 39

The statement made by Applicant in its Application Serial No. 85121744 that the specimen submitted in connection therewith showed the mark "as used in commerce" was made by Applicant to induce authorized agents of the United States Patent and Trademark Office to grant a registration on that application to Applicant.

REQUEST NO. 40

Applicant has not distributed any goods in packaging bearing the mark shown in its Application Serial No. 85121744 in interstate commerce.

REQUEST NO. 41

Applicant has not transported any goods in packaging bearing the mark shown in its Application Serial No. 85121744 in interstate commerce.

REQUEST NO. 42

Applicant has never used any point-of-purchase displays for the sale of goods in packaging bearing the mark shown in its Application Serial No. 85121744.

REQUEST NO. 43

Applicant has never exhibited at any trade shows any goods in packaging bearing the mark shown in its Application Serial No. 85121744.

REQUEST NO. 44

Applicant has never exhibited any trade show displays bearing the mark shown in its Application Serial No. 85121744.

REQUEST NO. 45

Applicant has never used radio advertising in connection with its Mark shown in its Application Serial No. 85121744.

REQUEST NO. 46

Applicant has never used print advertising in connection with its Mark shown in its Application Serial No. 85121744.

REQUEST NO. 47

Applicant has never used television advertising in connection with its Mark shown in its Application Serial No. 85121744.

REQUEST NO. 48

Applicant has never created a business plan in connection with its Mark shown in its Application Serial No. 85121744.

REQUEST NO. 49

Applicant has not distributed any goods in packaging bearing the mark shown in its Application Serial No. 85077274 in interstate commerce.

REQUEST NO. 50

Applicant has not transported any goods in packaging bearing the mark shown in its Application Serial No. 85077274 in interstate commerce.

REQUEST NO. 51

Applicant has never used any point-of-purchase displays for the sale of goods in packaging bearing the mark shown in its Application Serial No. 85077274.

REQUEST NO. 52

Applicant has never exhibited at any trade shows any goods in packaging bearing the mark shown in its Application Serial No. 85077274.

REQUEST NO. 53

Applicant has never exhibited any trade show displays bearing the mark shown in its Application Serial No. 85077274.

REQUEST NO. 54

Applicant has never used radio advertising in connection with its Mark shown in its Application Serial No. 85077274.

REQUEST NO. 55

Applicant has never used print advertising in connection with its Mark shown in its Application Serial No. 85077274.

REQUEST NO. 56

Applicant has never used television advertising in connection with its Mark shown in its Application Serial No. 85077274.

REQUEST NO. 57

Applicant has never created a business plan in connection with its Mark shown in its Application Serial No. 85077274.

REQUEST NO. 58

Applicant has never used the Mark shown in its Application Serial Number 85121744 on tags for goods.

REQUEST NO. 59

Applicant has never used mailing labels to which the Mark shown in its Application Serial Number 85121744 has been affixed.

REQUEST NO. 60

The Mark shown in Application Serial Number 85121744 has never been stamped on containers for goods.

REQUEST NO. 61

Applicant has never used the Mark shown in its Application Serial Number 85077274 on tags for goods.

REQUEST NO. 62

Applicant has never used mailing labels to which the Mark shown in its Application Serial Number 85077274 has been affixed.

REQUEST NO. 63

The Mark shown in Application Serial Number 85077274 has never been stamped on containers for goods.

REQUEST NO. 64

Exhibit 1 hereto depicts a can which appears on Applicant's Facebook page.

REQUEST NO. 65

The can depicted in Exhibit 1 indicates that the product therein is 11% alcohol.

REQUEST NO. 66

The product in the can depicted in Exhibit 1 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85121744.

REQUEST NO. 67

Exhibit 2 hereto depicts a can which appears on Applicant's Facebook page.

REQUEST NO. 68

The can depicted in Exhibit 2 indicates that the product therein is produced with 30% vodka, among other ingredients.

REQUEST NO. 69

The product in the can depicted in Exhibit 2 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85121744.

REQUEST NO. 70

Exhibit 3 hereto depicts a can which appears on Applicant's Facebook page.

REQUEST NO. 71

The can depicted in Exhibit 3 indicates that the product therein is produced with 30% vodka, among other ingredients.

REQUEST NO. 72

The product in the can depicted in Exhibit 3 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85121744.

REQUEST NO. 73

Exhibit 1 hereto depicts a can which appears on Applicant's Facebook page.

REQUEST NO. 74

The can depicted in Exhibit 1 indicates that the product therein is 11% alcohol.

REQUEST NO. 75

The product in the can depicted in Exhibit 1 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85077274.

REQUEST NO. 76

Exhibit 2 hereto depicts a can which appears on Applicant's Facebook page.

REQUEST NO. 77

The can depicted in Exhibit 2 indicates that the product therein is produced with 30% vodka, among other ingredients.

REQUEST NO. 78

The product in the can depicted in Exhibit 2 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85077274.

REQUEST NO. 79

Exhibit 3 hereto depicts a can which appears on Applicant's Facebook page.

REQUEST NO. 80

The can depicted in Exhibit 3 indicates that the product therein is produced with 30% vodka, among other ingredients.

REQUEST NO. 81

The product in the can depicted in Exhibit 3 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85077274.

REQUEST NO. 82

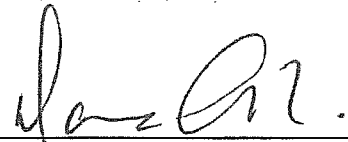
Exhibit 4 hereto is a picture which appears on Applicant's website.

REQUEST NO. 83

Exhibit 4 hereto correctly indicates Applicant's sole place of business as New Orleans, Louisiana.

Dated: April 2, 2012

BAKER & HOSTETLER LLP

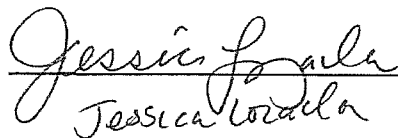
By: 

Robert B.G. Horowitz
Donna A. Tobin
45 Rockefeller Plaza
New York, New York 10111
(212) 589-4200
Attorneys for Opposer
Calpis Co., Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT was served on April 2, 2012 by first class mail, postage prepaid, in an envelope addressed to Applicant as follows:

Calico Jack's LLC
Attn: Sidney J. Martin
19 Autumn Lane
Carriere, MS 39426-7070



Jessica Lora

EXHIBIT 1



EXHIBIT 2

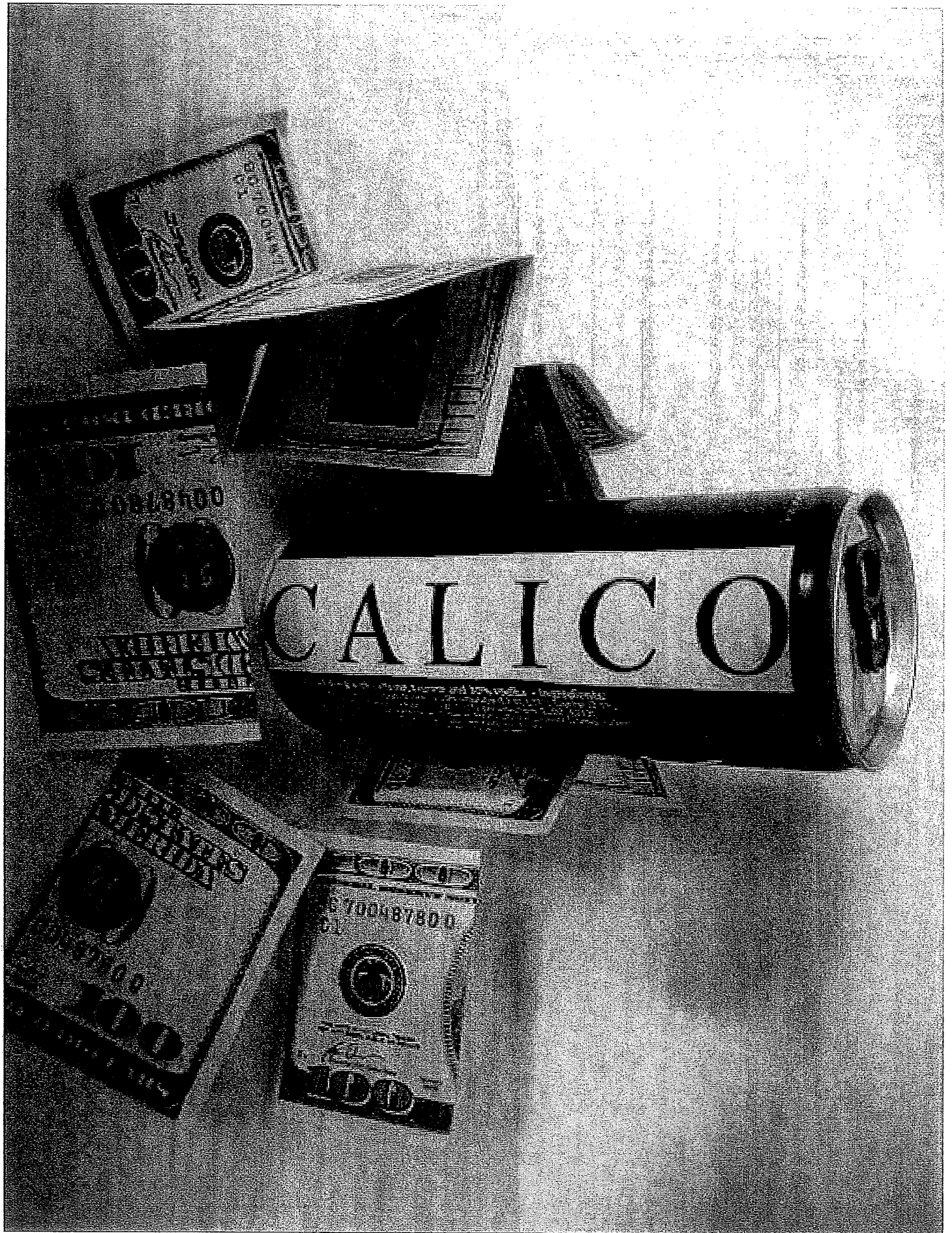


EXHIBIT 3



EXHIBIT 4

CALICO JACK'S

ORIGINAL ENERGY DRINK



Interested in becoming a distributor of Calico Jack's? Please contact us at info@calico-jacks.com
New Orleans | Louisiana | USA | 504-355-9639 © Copyright 2010 Calico Jack's L.L.C.

Visuals created by: The Graphics Exchange Agency

EXHIBIT 4

Tobin, Donna A.

From: Tobin, Donna A.
Sent: Friday, June 15, 2012 1:36 PM
To: Sidney Martin
Cc: Horowitz, Robert B. G.
Subject: RE: Calpis v. Calico Jack's, Opp. No. 91199109(consolidated)

Importance: High

Dear Mr. Martin:

I am writing to advise that we have not received Applicant's Responses to Opposer's Interrogatories or Document Requests to Applicant, nor have we received Applicant's Initial Disclosures. Pursuant to the applicable Federal and Trademark Rules we are required to discuss these failures with you prior to filing a Motion to Compel Applicant's Responses. I would like to set up a call with you next week. Please advise whether you are available next Monday, Tuesday or Wednesday for a telephone call or suggest a different time. If we do not hear from you by Wednesday of next week (June 20) we will assume you do not wish to participate in a telephone call.

Best regards-

Donna

Donna A. Tobin
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, N.Y. 10111
212 589-4250 (Tel)
212 589-4201 (Fax)
www.bakerlaw.com

EXHIBIT 5

Tobin, Donna A.

From: Tobin, Donna A.
Sent: Monday, June 18, 2012 4:19 PM
To: calicoenergy@yahoo.com
Cc: Horowitz, Robert B. G.; Tobin, Donna A.; Zapata, Dina
Subject: FW: Calpis
Attachments: First Set of Document Requests.pdf; First Set of Interrogatories.pdf; First Set of Requests for Admission.pdf

Dear Mr. Martin-

Thanks again for your call today. Pursuant to our discussion I attach the discovery requests we previously served by mailing to your address of record on the US Trademark Office website. The documents were not returned to us by the US Post Office.

As you told me today, your current address now is :
501 North Jeff Davis Pkwy
P.O. Box 791076
New Orleans, Louisiana 70119.

You may want to update the US Patent and Trademark Office records to reflect this new address.

If you would like us to serve you electronically in the future, by email instead of mailing, please confirm this in a return email.

Given the time that has passed since we served this discovery, please advise whether you will consent to a sixty (60) day extension of all deadlines in this matter. If you will consent, we will file a motion to so extend the deadlines.

Best regards-

Donna

Donna A. Tobin
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, N.Y. 10111
212 589-4250 (Tel)
212 589-4201 (Fax)
www.bakerlaw.com

EXHIBIT 6

Tobin, Donna A.

From: Sidney Martin <calicoenergy@yahoo.com>
Sent: Tuesday, June 19, 2012 1:53 PM
To: Tobin, Donna A.
Subject: Re: Calpis
Attachments: First_Set_of_Requests_for_Admission123.pdf; First_Set_of_Interrogatories123.pdf; First_Set_of_Document_Requests123.pdf; CERTIFICATE OF SERVICE.FSDR.pdf; CERTIFICATE OF SERVICE.FSI.pdf; CERTIFICATE OF SERVICE.FSR.pdf

Here is the information you requested. See attached files. No need for extensions. Do I need to file this with the uspto or is this for your personal records?



With best regards,

Calico Jack's LLC.
Sidney J. Martin III
1-504-355-9639
calicoenergy@yahoo.com
<http://www.calico-jacks.com/>

NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521.

Confidential Information: This electronic message (including any attachments) contains information that is confidential or proprietary. The information is intended to be used by the individual or entity named or addressed in the body of the message. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message (including any attachments) is prohibited. Access to this E-mail by anyone else is unauthorized. If you have received this electronic message improperly, in error or otherwise are not the intended recipient, please notify the sender immediately by reply e-mail.

From: "Tobin, Donna A." <dtobin@bakerlaw.com>
To: "calicoenergy@yahoo.com" <calicoenergy@yahoo.com>
Cc: "Horowitz, Robert B. G." <rhhorowitz@bakerlaw.com>; "Tobin, Donna A." <dtobin@bakerlaw.com>; "Zapata, Dina" <dzapata@bakerlaw.com>
Sent: Monday, June 18, 2012 3:19 PM
Subject: FW: Calpis

Dear Mr. Martin-

Thanks again for your call today. Pursuant to our discussion I attach the discovery requests we previously served by mailing to your address of record on the US Trademark Office website. The documents were not returned to us by the US Post Office.

As you told me today, your current address now is :
501 North Jeff Davis Pkwy
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New Orleans, Louisiana 70119.

You may want to update the US Patent and Trademark Office records to reflect this new address.

If you would like us to serve you electronically in the future, by email instead of mailing, please confirm this in a return email.

Given the time that has passed since we served this discovery, please advise whether you will consent to a sixty (60) day extension of all deadlines in this matter. If you will consent, we will file a motion to so extend the deadlines.

Best regards-

Donna

Donna A. Tobin
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, N.Y. 10111
212 589-4250 (Tel)
212 589-4201 (Fax)
<http://www.bakerlaw.com/>

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EXHIBIT 7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CALPIS CO., LTD.)	
)	
Opposer,)	
)	Consolidated
v.)	Opposition Nos. 91199109 and
)	91199111
)	
CALICO JACK'S L.L.C)	
)	
Applicant.)	

OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT

Opposer CALPIS CO., LTD. ("Opposer") hereby requests that Applicant CALICO JACK'S L.L.C. ("Applicant") in accordance with Rule 34, F.R.Civ.P., and 37 C.F.R. § 2.120, produce for inspection and copying the below requested documents and things. The documents and things shall be produced within thirty (30) days after service hereof at the offices of BAKER & HOSTETLER LLP, New York, New York 10111, or at such other time and place agreed upon by counsel.

DEFINITIONS

A. As used herein, the terms "Applicant" includes CALICO JACK'S L.L.C., its predecessors in interest, and any business entities, agents, individuals or entities who act or have acted or who purport to act or have purported to act, on its behalf, including but not limited to Mr. Sidney Martin.

"PLEAD THE FIFTH"

B. As used herein, the term "Opposer" includes CALPIS CO., LTD., its predecessors in interest, and all of its subsidiaries and affiliated companies.

C. As used herein, the "Applicant's marks" and "the Marks" includes any and all marks comprising CALICO alone or in combination with another mark, element or component, or any similar mark, including but not limited to the marks set forth in Applicant's trademark applications which are the subject of these proceedings. "PLEAD THE FIFTH"

D. As used herein, "CALPICO Marks" are defined as CALPICO, CALPICO WATER and CALPICO SODA, as referred to in the Notices of Opposition filed in this matter. "PLEAD THE FIFTH"

E. As used herein, the term "documents" includes, but is not limited to, all writings, emails, facsimiles, summaries, minutes and records of in-person or telephone conversations, meetings and conferences, notes, notations, communications, correspondence, invoices, contracts, purchase orders, statements, bills, checks, agreements, memoranda of understanding, memoranda, books, pamphlets, publications, assignments, licenses, studies, reports, labels, packaging, artwork, advertisements, tear sheets, manuals, circulars, press releases, catalogs, flyers, brochures, proofs, displays, photographs, videotapes, models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form, and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process and includes all drafts, originals, masters and non-identical copies. "PLEAD THE FIFTH"

F. As used herein, the terms "identify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Applicant, whether or not in the possession of Applicant and whether or not alleged to be privileged, including the following information:

"PLEAD THE FIFTH"

1. In the case of a person, his/her full name, address, job title and present employer;

"PLEAD THE FIFTH"

2. In the case of a company, firm, corporation or association, its name, business address and identity of persons having knowledge of the matter about which the company is named;

"PLEAD THE FIFTH"

3. In the case of a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender; and "PLEAD THE FIFTH"
4. In the case of printed material, its title, author, publication date, volume and the relevant page numbers. The term "person" shall mean and include any natural person, business organization or entity such as corporation, partnership or the like. "PLEAD THE FIFTH"
- G. In the following document requests, if a privilege is alleged as to information or materials or if a document request is otherwise not answered in full, state the specific grounds for not answering in full and answer said document request to the extent to which it is not objected, including the identification of all information or materials for which privilege is claimed and the specific nature of any such privilege. "PLEAD THE FIFTH"
- H. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents which might otherwise be construed to be outside its scope. "PLEAD THE FIFTH"
- I. As used herein, the singular shall include the plural, and the present tense shall include the past tense. "PLEAD THE FIFTH"
- J. The term "referring or relating to" includes responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, constituting, and forming a basis for. "PLEAD THE FIFTH"
- K. The following document requests shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these document requests which Applicant acquires or which becomes known to Applicant up to and including the time of trial shall be furnished to Opposer immediately after such information is first acquired or becomes known. "PLEAD THE FIFTH"

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1

All documents and things requested to be identified in, or used as the basis for answering, Opposer's First Set of Interrogatories to Applicant.

"PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 2

One sample of each type of goods advertised, made, distributed, offered for sale or sold by Applicant at any time in connection with each of the Marks.

"PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 3

All documents referring to, relating to or reflecting purchase and/or importation into the United States of goods or materials used to produce the goods sold in connection with each of the Marks by or on behalf of Applicant.

"PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 4

All documents referring to, relating to or reflecting Applicant's first use of each of the Marks (a) anywhere; and (b) in interstate commerce.

"PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 5

All documents referring to, relating to or reflecting the sale and/or distribution of goods in connection with each of the Marks by or on behalf of Applicant, including but not limited to purchase orders, invoices and correspondence.

"PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 6

All documents referring to, relating to or reflecting the production of goods sold in connection with each of the Marks by or on behalf of Applicant.

"PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 7

All licenses, approvals, consents or the like granted to or received by Applicant which refer or relate to each of the Marks.

"PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 8

All documents referring to, relating to, reflecting or comprising searches or investigations conducted by or on behalf of Applicant concerning each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 9

All documents referring to, relating to or reflecting Applicant's creation, adoption or development of each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 10

All advertising, informational and promotional materials, articles and press releases, referring or relating to each of Applicant's Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 11

All documents referring to, relating to, reflecting or comprising materials or sources of information used by Applicant in connection with the prosecution of the trademark applications that are the subject of these proceedings including any materials or sources of information used in connection with preparing specimens. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 12

All opinions obtained by or on behalf of Applicant in connection with adoption, application for registration and/or use of each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 13

All documents and things in Applicant's possession, custody or control which refer or relate in any manner to Opposer or to Opposer's use of its CALPICO Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 14

All documents referring to, relating to, reflecting or comprising registrations or applications to register each of the Marks, including as a domain name, filed by or on behalf of, or awarded to Applicant anywhere. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 15

All documents referring to, relating to, reflecting or comprising business plans or market research created or conducted by Applicant relating to goods sold in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 16

All documents referring to, relating to or reflecting the sources of goods sold or to be sold by or on behalf of Applicant in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 17

All documents referring to, relating to or reflecting prior litigation or legal proceedings to which Applicant has been or is a party. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 18

All documents referring to, relating to or reflecting the source or sources of ingredients, including flavorings, used in Applicant's goods sold in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 19

All documents referring to, relating to or reflecting use of the Marks by affiliates, agents, related companies or family relations of Applicant. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 20

All documents relating to the target customers for Applicant's goods sold or offered for sale in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 21

All documents referring to, relating to or reflecting Applicant's sales or annual revenue in unit and dollar volumes, in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 22

All documents referring to, relating to, or reflecting Applicant's advertising and promotional expenses in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 23

All documents referring to, relating to, reflecting or evidencing confusion between Applicant's use of each of the Marks and Opposer's use of its CALPICO mark. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 24

One sample of each type of packaging, including containers, boxes, labels and tags, used presently or in the past six years, or which Applicant intends to use in connection with goods advertised, made, distributed, offered for sale or sold by Applicant in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 25

All documents referring or relating to the taste or flavor of Applicant's goods sold or distributed in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 26

All documents referring to or relating to a drink or a flavor called or named CALICO JACK or any similar name. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 27

All documents including but not limited to contracts and invoices, referring or relating to the individuals or entities who created: a) the labels shown in the specimens of use submitted to the USPTO by Applicant for the opposed trademark applications; and, b) any other labels used by Applicant in connection with the actual sale or distribution of goods. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 28

All documents including but not limited to contracts and invoices, referring to or relating to the individuals or entities who created the packaging: a) shown in the specimens of use submitted to the USPTO by Applicant for the oppose trademark applications; and, b) used by Applicant in connection with the actual sale or distribution of goods. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 29

All documents referring or relating to the alcohol content in Applicant's goods sold in connection with each of the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 30

All documents referring or relating to Applicant's obtaining approval from Bureau of Alcohol, Tobacco and Firearms to use the Marks in connection with an alcoholic beverage. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 31

All documents referring or relating to the geographic location(s) a) from which Applicant has shipped goods sold in packaging bearing each of the Marks; and b) of Applicant's customers to whom it has shipped goods bearing the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 32

All documents referring or relating to the amounts: a) Applicant has paid its source(s) for the goods sold in connection with the Marks; and, b) Applicant charges its customers for goods sold in connection with the Marks. "PLEAD THE FIFTH"

DOCUMENT REQUEST NO. 33

All documents referring or relating to any criminal records of Applicant's owner, Mr. Sidney J. Martin. "PLEAD THE FIFTH"

DATED: JUNE, 16 2012

BY: 
CALICO JACKS LLC.
SIDNEY J. MARTIN III
19 AUTUMN LANE
CARRIERE, MS 39426
(504) 264-8394

CERTIFICATE OF SERVICE

I Hearby certify that on the 19th day of June, 2012 a true copy of APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER was served by first class mail, postage prepaid, in and envelope addressed to OPPOSER as follows:

BAKER & HOSTETLER LLP.
ROBERT B.G. HOROWITZ
DONNA TOBIN
45 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10111
(212) 589-4200
ATTORNEYS FOR OPPOSER



Sidney J. Martin III



EXHIBIT 8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CALPIS CO., LTD.)	
)	
Opposer,)	
)	Consolidated
v.)	Opposition Nos. 91199109
)	91199111
CALICO JACK'S L.L.C.)	
)	
Applicant.)	

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer CALPIS CO., LTD. ("Opposer") hereby requests that Applicant CALICO JACK'S L.L.C. ("Applicant") answer the following interrogatories under oath, pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, within thirty (30) days of the date hereof.

DEFINITIONS

A. As used herein, the terms "Applicant" and "Calico Jack's L.L.C." include CALICO JACK'S L.L.C., its predecessors in interest, and any business entities, agents, individuals or entities who act or have acted or who purport to act or have purported to act, on its behalf. "PLEAD THE FIFTH"

B. As used herein, the term "Opposer" includes Calpis Co., Ltd., its predecessors in interest, and all of its subsidiaries and affiliated companies. "PLEAD THE FIFTH"

C. As used herein, the "Applicant's marks" and "the Marks" includes any and all marks comprising CALICO and/or CALICO JACK'S alone or in combination with another mark, element or component, or any similar mark, including but not limited to

the marks set forth in Applicant's trademark applications which are the subject of these proceedings. "PLEAD THE FIFTH"

D. As used herein, the term "documents" includes, but is not limited to, all writings, emails, facsimiles, summaries, minutes and records of in-person or telephone conversations, meetings and conferences, notes, notations, communications, correspondence, invoices, contracts, purchase orders, statements, bills, checks, agreements, memoranda of understanding, memoranda, books, pamphlets, publications, assignments, licenses, studies, reports, labels, packaging, artwork, advertisements, tear sheets, manuals, circulars, press releases, catalogs, flyers, brochures, proofs, displays, photographs, videotapes, models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form, and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process and includes all drafts, originals, masters and non-identical copies. "PLEAD THE FIFTH"

E. As used herein, the terms "identify" and "state the identity of" shall mean a complete identification to the full extent known or ascertainable by Applicant, whether or not in the possession of Applicant and whether or not alleged to be privileged, including the following information: "PLEAD THE FIFTH"

1. In the case of a person, his/her full name, address, job title and present employer; "PLEAD THE FIFTH"

2. In the case of a company, firm, corporation or association, its name, business address and identity of persons having knowledge of the matter about which the company is named. "PLEAD THE FIFTH"

3. In the case of a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender; and "PLEAD THE FIFTH"

4. In the case of printed material, its title, author, publication date, volume and the relevant page numbers. The term "person" shall mean and include any natural person, business organization or entity such as corporation, partnership or the like. "PLEAD THE FIFTH"

F. In the following interrogatories, if a privilege is alleged as to information or materials or if an interrogatory is otherwise not answered in full, state the specific grounds for not answering in full and answer said interrogatory to the extent to which it is not objected, including the identification of all information or materials for which privilege is claimed and the specific nature of any such privilege. "PLEAD THE FIFTH"

G. As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents which might otherwise be construed to be outside its scope. "PLEAD THE FIFTH"

H. As used herein, the singular shall include the plural, and the present tense shall include the past tense. "PLEAD THE FIFTH"

I. The term "referring or relating to" includes responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, reflecting, analyzing, constituting, and forming a basis for. "PLEAD THE FIFTH"

J. The following interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating

in anyway to these interrogatories which Applicant acquires or which becomes known to Applicant up to and including the time of trial shall be furnished to Opposer immediately after such information is first acquired or becomes known. "PLEAD THE FIFTH"

D. As used herein, "CALPICO Marks" are defined as CALPICO, CALPICO WATER and CALPICO SODA, as referred to in the Notices of Opposition filed in this matter.

"PLEAD THE FIFTH"

INTERROGATORIES

INTERROGATORY No. 1.

State Sidney Martin's (a) current address; (b) current occupation; (c) educational and business history, including any degrees earned; and, (d) his experience, if any, in connection with the goods listed in its trademark applications that are the subject of these proceedings and the industry in which such goods are sold. "PLEAD THE FIFTH"

INTERROGATORY NO. 2.

State whether Applicant has a written business plan for the Marks and, if so, identify the date thereof and all persons who participated in the creation and writing of the plan. "PLEAD THE FIFTH"

INTERROGATORY NO. 3.

Identify all goods sold by Applicant in association with the Marks at any time, specifying each such mark as applied to such goods, and stating the time periods during which each of such goods and/or services were sold or rendered.

"PLEAD THE FIFTH"

INTERROGATORY NO. 4.

For each of the goods and services identified in both of Applicant's trademark applications which are the subject of these oppositions, state when Applicant first adopted and/or used each mark in connection therewith. "PLEAD THE FIFTH"

INTERROGATORY NO. 5.

Identify the types of sales outlets in which Applicant sells goods in connection with each of the Marks, including but not limited to the approximate size of such sales outlets, the nature and geographic locations of such sales outlets and whether such sales outlets will be operated under each of the Marks or other marks.

"PLEAD THE FIFTH"

INTERROGATORY NO. 6.

Identify the actual and intended purchasers of goods sold by Applicant in connection with each of the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 7.

Identify the source(s) of supply of the goods identified in Applicant's trademark applications that are the subject of these opposition proceedings and all goods sold by Applicant in connection with each of the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 8.

Identify the individuals and/or entities who have assisted or who will assist Applicant in selling goods in connection with each of the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 9.

Separately for each of the goods in connection with which each of the Marks has been used, state whether there has been any interruption in the use of the Marks by Applicant and state the dates of interruption and resumption of use, if any.

"PLEAD THE FIFTH"

INTERROGATORY NO. 10.

State on an annualized basis the amount of Applicant's unit and dollar sales of goods sold in association with each of the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 11.

State the amount or projected amount of Applicant's advertising and promotional expenditures in connection with each of the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 12.

State the methods of advertising and promotion in which Applicant has engaged in connection with goods bearing each of the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO.13.

Identify any trade shows in which Applicant has displayed, promoted or exhibited goods bearing the Marks and identify any trade shows in which Applicant intends to display, promote or exhibit goods bearing the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 14.

Identify the individual(s) responsible for the creation and/or adoption of the Marks by or on behalf of Applicant and state the dates of such creation and/or adoption.

"PLEAD THE FIFTH"

INTERROGATORY NO. 15.

Identify the individual(s) involved in the decision to adopt the Marks.

"PLEAD THE FIFTH"

INTERROGATORY NO. 16.

Describe the circumstances surrounding the creation and/or adoption of the Marks by or on behalf of Applicant. "PLEAD THE FIFTH"

INTERROGATORY NO. 17.

Identify the reason(s) and purpose for Applicant's adoption of the Marks.

"PLEAD THE FIFTH"

INTERROGATORY NO. 18.

Identify the operators of all newspapers, trade journals, magazines, radio, television and other media outlets with whom Applicant has discussed use or advertising of the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 19.

Identify all individuals and entities who have assisted or will assist Applicant in connection with use of the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 20.

State any and all efforts made by Applicant to determine whether the Marks could legally be used by Applicant in connection with the goods described in its trademark applications that are the subject of these proceedings, including but not limited to the conducting of any trademark searches or seeking of legal advice.

"PLEAD THE FIFTH"

INTERROGATORY NO. 21.

Identify the actual and potential source(s) or vendor(s) of goods sold or to be sold by Applicant in connection with the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 22.

Describe in detail all instances of actual confusion known to Applicant between the source of Opposer's goods and/or services and any goods sold or services rendered by Applicant in connection with the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 23.

Identify and describe the channels of advertising, promotion and trade in the United States for each of the goods and services Applicant sells or renders or intends to sell or render in connection with the Marks. "PLEAD THE FIFTH"

INTERROGATORY NO. 24.

Identify all individuals and entities which have distributed goods in connection with the Marks, including the name and address of each individual or entity.

"PLEAD THE FIFTH"

INTERROGATORY NO. 25.

State whether Applicant's Owner, Mr. Sidney J. Martin, ever has been convicted of a crime and if so, please state the date(s) and nature of such conviction(s).

"PLEAD THE FIFTH"

INTERROGATORY NO. 26.

State whether the term "CALICO JACK" has any significance or meaning in the field of drinks and spirits and if so, describe such significance or meaning.

"PLEAD THE FIFTH"

DATED: JUNE 16, 2012

BY: 

CALICO JACKS LLC
SIDNEY J. MARTIN III
19 AUTUMN LANE
CARRIERE, MS 39426
(504)264-8394

CERTIFICATE OF SERVICE

I Hearby certify that on the 19th day of June, 2012 a true copy of APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER was served by first class mail, postage prepaid, in and envelope addressed to OPPOSER as follows:

BAKER & HOSTETLER LLP.
ROBERT B.G. HOROWITZ
DONNA TOBIN
45 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10111
(212) 589-4200
ATTORNEYS FOR OPPOSER



Sidney J. Martin III



EXHIBIT 9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CALPIS CO., LTD.)	
)	
Opposer,)	
)	Consolidated
v.)	Opposition Nos. 91199109 and
)	91199111
)	
CALICO JACK'S L.L.C)	
)	
Applicant.)	

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Opposer CALPIS CO., LTD. ("Opposer") hereby requests that Applicant CALICO JACK'S L.L.C. ("Applicant") pursuant to Rule 36 of the Federal Rules of Civil Procedure, admit, for purposes of the pending action only, the truth of the following facts, application of law to fact or opinions concerning either and the genuineness of any described document within thirty (30) days after service hereof at the offices of BAKER & HOSTETLER LLP, New York, New York 10111, or at such other time and place agreed upon by counsel.

DEFINITIONS

The following definitions are applicable to terms employed in these Requests.

1. As used herein, the term "Opposer" includes CALPIS CO., LTD., its predecessors in interest, and all of its subsidiaries and affiliated companies. "PLEAD THE FIFTH"
2. As used herein, the terms "Applicant" includes CALICO JACK'S L.L.C., its predecessors in interest, and any business entities, agents, individuals or entities who act or

have acted or who purport to act or have purported to act, on its behalf, including but not limited to Mr. Sidney Martin. "PLEAD THE FIFTH"

3. As used herein, the "Applicant's marks" and "the Marks" includes any and all marks comprising CALICO alone or in combination with another mark, element or component, or any similar mark, including but not limited to the marks set forth in Applicant's trademark applications which are the subject of these proceedings. "PLEAD THE FIFTH"

4. As used herein, the word "commerce" has the definition in 15 U.S.C. Section 1127. "PLEAD THE FIFTH"

REQUEST FOR ADMISSIONS

REQUEST NO. 1

Applicant has never sold goods in connection with the Mark shown in its Application Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 2

Applicant has never distributed goods in connection with the Mark shown in its Application Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 3

If Applicant has sold goods in connection with the Mark shown in its Application Serial No. 85121744 such sales have been made only to customers within Louisiana. "PLEAD THE FIFTH"

REQUEST NO. 4

If Applicant has distributed goods in connection with the Mark shown in its Application Serial No. 85121744 such goods have been distributed only to customers within Louisiana. "PLEAD THE FIFTH"

REQUEST NO. 5

Applicant has never sold goods in connection with the Mark shown in its Application Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 6

Applicant has never distributed goods in connection with the Mark shown in its Application Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 7

If Applicant has sold goods in connection with the Mark shown in its Application Serial No. 85077274 such sales have been made only to customers within Mississippi. "PLEAD THE FIFTH"

REQUEST NO. 8

If Applicant has distributed goods in connection with the Mark shown in its Application Serial No. 85077274 such goods have been distributed only to customers within Mississippi. "PLEAD THE FIFTH"

REQUEST NO. 9

Applicant has only sold alcoholic beverages in connection with the Mark shown in its Application Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 10

Applicant has only sold alcoholic beverages in connection with the Mark shown in its Application Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 11

Applicant has never sold non-alcoholic beverages in connection with the Mark shown in its Application Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 12

Applicant has never sold non-alcoholic beverages in connection with the Mark shown in its Application Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 13

The term "Calico Jack" is a generic term for a particular alcoholic drink.

REQUEST NO. 14 "PLEAD THE FIFTH"

The term "Calico Jack" is a generic term for a particular alcoholic drink which contains lemon juice, dark rum and a sweetener. "PLEAD THE FIFTH"

REQUEST NO. 15

Applicant's drinks sold under the Marks taste similar to a particular alcoholic drink known as a Calico Jack. "PLEAD THE FIFTH"

REQUEST NO. 16

Applicant's drinks sold under the Marks contain flavorings which also are used in a particular alcoholic drink known as a Calico Jack. "PLEAD THE FIFTH"

REQUEST NO. 17

Applicant's drinks sold under the Marks contain flavorings of the type which are also used by third parties in a particular alcoholic drink known as a Calico Jack. "PLEAD THE FIFTH"

REQUEST NO. 18

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant has never used on goods distributed in commerce. "PLEAD THE FIFTH"

REQUEST NO. 19

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant created for the purpose of providing a specimen to support its application. "PLEAD THE FIFTH"

REQUEST NO. 20

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant created. "PLEAD THE FIFTH"

REQUEST NO. 21

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant made out of paper. "PLEAD THE FIFTH"

REQUEST NO. 22

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 shows a label which Applicant taped to a can. "PLEAD THE FIFTH"

REQUEST NO. 23

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85077274 was created by Applicant from a can used for alcoholic beverages. "PLEAD THE FIFTH"

REQUEST NO. 24

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant has never used on goods distributed in commerce.
"PLEAD THE FIFTH"

REQUEST NO. 25

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant created for the purpose of providing a specimen to support its application. "PLEAD THE FIFTH"

REQUEST NO. 26

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant created. "PLEAD THE FIFTH"

REQUEST NO. 27

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant made out of paper. "PLEAD THE FIFTH"

REQUEST NO. 28

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 shows a label which Applicant taped to a can. "PLEAD THE FIFTH"

REQUEST NO. 29

The specimen submitted by Applicant to prove use of its Mark in its pending application Serial No. 85121744 was created by Applicant from a can used for alcoholic beverages.
"PLEAD THE FIFTH"

REQUEST NO. 30

Applicant submitted a statement in its Application Serial No. 85077274 that the specimen submitted in connection therewith showed the mark "as used in commerce." "PLEAD THE FIFTH"

REQUEST NO. 31

Applicant submitted a signed Declaration in its Application Serial No. 85077274 in which it stated that all statements made therein were true. "PLEAD THE FIFTH"

REQUEST NO. 32

The statement made by Applicant in its Application Serial No. 85077274 that the specimen submitted in connection therewith showed the mark "as used in commerce" was false when made. "PLEAD THE FIFTH"

REQUEST NO. 33

The statement made by Applicant in its Application Serial No. 85077274 that the specimen submitted in connection therewith showed the mark "as used in commerce" was knowingly made. "PLEAD THE FIFTH"

REQUEST NO. 34

The statement made by Applicant in its Application Serial No. 85077274 that the specimen submitted in connection therewith showed the mark "as used in commerce" was made by Applicant to induce authorized agents of the United States Patent and Trademark Office to grant a registration on that application to Applicant. "PLEAD THE FIFTH"

REQUEST NO. 35

Applicant submitted a statement in its Application Serial No. 85121744 that the specimen submitted in connection therewith showed the mark "as used in commerce." "PLEAD THE FIFTH"

REQUEST NO. 36

Applicant submitted a signed Declaration in its Application Serial No. 85121744 in which it stated that all statements made therein were true. "PLEAD THE FIFTH"

REQUEST NO. 37

The statement made by Applicant in its Application Serial No. 85121744 that the specimen submitted in connection therewith showed the mark "as used in commerce" was false when made. "PLEAD THE FIFTH"

REQUEST NO. 38

The statement made by Applicant in its Application Serial No. 85121744 that the specimen submitted in connection therewith showed the mark "as used in commerce" was knowingly made. "PLEAD THE FIFTH"

REQUEST NO. 39

The statement made by Applicant in its Application Serial No. 85121744 that the specimen submitted in connection therewith showed the mark "as used in commerce" was made by Applicant to induce authorized agents of the United States Patent and Trademark Office to grant a registration on that application to Applicant. "PLEAD THE FIFTH"

REQUEST NO. 40

Applicant has not distributed any goods in packaging bearing the mark shown in its Application Serial No. 85121744 in interstate commerce. "PLEAD THE FIFTH"

REQUEST NO. 41

Applicant has not transported any goods in packaging bearing the mark shown in its Application Serial No. 85121744 in interstate commerce. "PLEAD THE FIFTH"

REQUEST NO. 42

Applicant has never used any point-of-purchase displays for the sale of goods in packaging bearing the mark shown in its Application Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 43

Applicant has never exhibited at any trade shows any goods in packaging bearing the mark shown in its Application Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 44

Applicant has never exhibited any trade show displays bearing the mark shown in its Application Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 45

Applicant has never used radio advertising in connection with its Mark shown in its Application
Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 46

Applicant has never used print advertising in connection with its Mark shown in its Application
Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 47

Applicant has never used television advertising in connection with its Mark shown in its
Application Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 48

Applicant has never created a business plan in connection with its Mark shown in its Application
Serial No. 85121744. "PLEAD THE FIFTH"

REQUEST NO. 49

Applicant has not distributed any goods in packaging bearing the mark shown in its Application
Serial No. 85077274 in interstate commerce. "PLEAD THE FIFTH"

REQUEST NO. 50

Applicant has not transported any goods in packaging bearing the mark shown in its Application
Serial No. 85077274 in interstate commerce. "PLEAD THE FIFTH"

REQUEST NO. 51

Applicant has never used any point-of-purchase displays for the sale of goods in packaging
bearing the mark shown in its Application Serial No.85077274. "PLEAD THE FIFTH"

REQUEST NO. 52

Applicant has never exhibited at any trade shows any goods in packaging bearing the mark
shown in its Application Serial No. .85077274. "PLEAD THE FIFTH"

REQUEST NO. 53

Applicant has never exhibited any trade show displays bearing the mark shown in its Application
Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 54

Applicant has never used radio advertising in connection with its Mark shown in its Application
Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 55

Applicant has never used print advertising in connection with its Mark shown in its Application
Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 56

Applicant has never used television advertising in connection with its Mark shown in its
Application Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 57

Applicant has never created a business plan in connection with its Mark shown in its Application
Serial No. 85077274. "PLEAD THE FIFTH"

REQUEST NO. 58

Applicant has never used the Mark shown in its Application Serial Number 85121744 on tags for
goods. "PLEAD THE FIFTH"

REQUEST NO. 59

Applicant has never used mailing labels to which the Mark shown in its Application Serial
Number 85121744 has been affixed. "PLEAD THE FIFTH"

REQUEST NO. 60

The Mark shown in Application Serial Number 85121744 has never been stamped on
containers for goods. "PLEAD THE FIFTH"

REQUEST NO. 61

Applicant has never used the Mark shown in its Application Serial Number 85077274 on tags for goods. "PLEAD THE FIFTH"

REQUEST NO. 62

Applicant has never used mailing labels to which the Mark shown in its Application Serial Number 85077274 has been affixed. "PLEAD THE FIFTH"

REQUEST NO. 63

The Mark shown in Application Serial Number 85077274 has never been stamped on containers for goods. "PLEAD THE FIFTH"

REQUEST NO. 64

Exhibit 1 hereto depicts a can which appears on Applicant's Facebook page. "PLEAD THE FIFTH"

REQUEST NO. 65

The can depicted in Exhibit 1 indicates that the product therein is 11% alcohol. "PLEAD THE FIFTH"

REQUEST NO. 66

The product in the can depicted in Exhibit 1 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85121744. "PLEAD THE FIFTH"

REQUEST NO. 67

Exhibit 2 hereto depicts a can which appears on Applicant's Facebook page. "PLEAD THE FIFTH"

REQUEST NO. 68

The can depicted in Exhibit 2 indicates that the product therein is produced with 30% vodka, among other ingredients. "PLEAD THE FIFTH"

REQUEST NO. 69

The product in the can depicted in Exhibit 2 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85121744. "PLEAD THE FIFTH"

REQUEST NO. 70

Exhibit 3 hereto depicts a can which appears on Applicant's Facebook page. "PLEAD THE FIFTH"

REQUEST NO. 71

The can depicted in Exhibit 3 indicates that the product therein is produced with 30% vodka, among other ingredients. "PLEAD THE FIFTH"

REQUEST NO. 72

The product in the can depicted in Exhibit 3 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85121744. "PLEAD THE FIFTH"

REQUEST NO. 73

Exhibit 1 hereto depicts a can which appears on Applicant's Facebook page. "PLEAD THE FIFTH"

REQUEST NO. 74

The can depicted in Exhibit 1 indicates that the product therein is 11% alcohol. "PLEAD THE FIFTH"

REQUEST NO. 75

The product in the can depicted in Exhibit 1 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85077274. "PLEAD THE FIFTH"

REQUEST NO. 76

Exhibit 2 hereto depicts a can which appears on Applicant's Facebook page. "PLEAD THE FIFTH"

REQUEST NO. 77

The can depicted in Exhibit 2 indicates that the product therein is produced with 30% vodka, among other ingredients. "PLEAD THE FIFTH"

REQUEST NO. 78

The product in the can depicted in Exhibit 2 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85077274. "PLEAD THE FIFTH"

REQUEST NO. 79

Exhibit 3 hereto depicts a can which appears on Applicant's Facebook page. "PLEAD THE FIFTH"

REQUEST NO. 80

The can depicted in Exhibit 3 indicates that the product therein is produced with 30% vodka, among other ingredients. "PLEAD THE FIFTH"

REQUEST NO. 81

The product in the can depicted in Exhibit 3 is the only type of product sold in connection with Applicant's Mark in Application Serial Number 85077274. "PLEAD THE FIFTH"

REQUEST NO. 82

Exhibit 4 hereto is a picture which appears on Applicant's website. "PLEAD THE FIFTH"

REQUEST NO. 83

Exhibit 4 hereto correctly indicates Applicant's sole place of business as New Orleans, Louisiana. "PLEAD THE FIFTH"

DATED: JUNE 16, 2012

BY:

CALICO JACKS LLC
SIDNEY J. MARTIN III
19 AUTUMN LANE
CARRIERE, MS 39426


A large, stylized handwritten signature in black ink, likely belonging to Sidney J. Martin III, is written over the typed name and address.

EXHIBIT 1



EXHIBIT 2

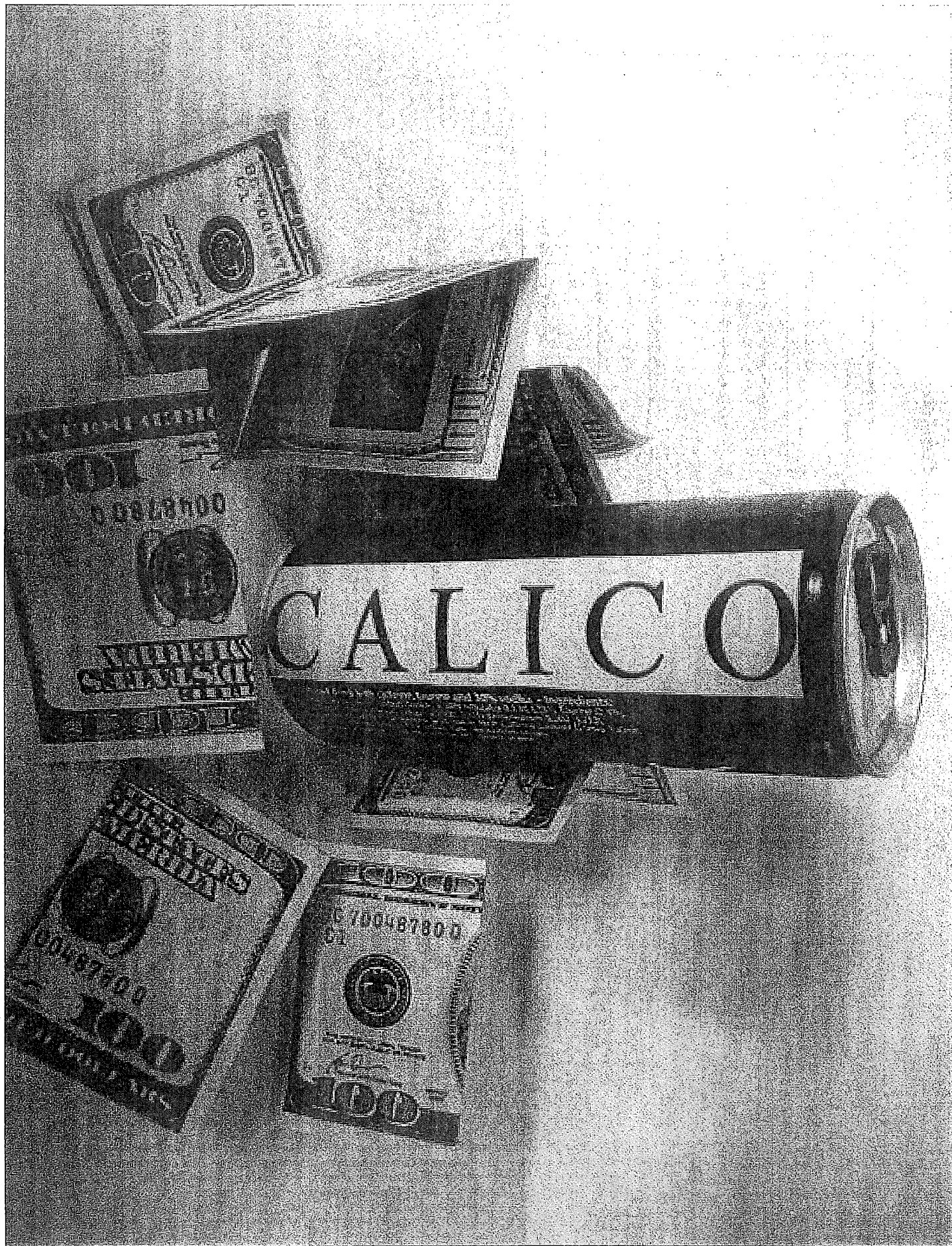


EXHIBIT 3



EXHIBIT 4

CALICO JACK'S

ORIGINAL ENERGY DRINK



Interested in becoming a distributor of Calico Jack's? Please contact us at info@calico-jacks.com
New Orleans | Louisiana | USA | 504-355-9699 Copyright 2010 Calico Jack's L.L.C.

Not for sale in the United Kingdom

CERTIFICATE OF SERVICE

I Hearby certify that on the 19th day of June, 2012 a true copy of APPLICANT'S FIRST SET OF REQUEST FOR ADMISSION TO OPPOSER was served by first class mail, postage prepaid, in and envelope addressed to OPPOSER as follows:

BAKER & HOSTETLER LLP.
ROBERT B.G. HOROWITZ
DONNA TOBIN
45 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10111
(212) 589-4200
ATTORNEYS FOR OPPOSER



Sidney J. Martin III



EXHIBIT 10

Tobin, Donna A.

From: Horowitz, Robert B. G.
Sent: Thursday, June 28, 2012 2:07 PM
To: Sidney Martin
Cc: Tobin, Donna A.
Subject: RE: Opposition proceedings

Dear Mr. Martin:

Our lengthy telephone call suddenly ended when I was trying to explain to you that I was expressing no agreement or disagreement about your use of any of your marks on a racing boat or a racing car, because my client would be the one to agree or disagree.

I also said to you during our conversation as follows:

1. Your "plead the fifth" response to each and every discovery request served upon you is inappropriate and not responsive to the discovery requests.
2. I am limited in what I can say to you about how you should respond to the discovery requests since I am bound by the canons of ethics and represent a party opposing you.

I did discuss with you how marks are considered in terms of sound, meaning and/or appearance in a likelihood of confusion analysis, and I did say to you that in my opinion, your views of what the law is are not what the law is.

You inquired what "will make the oppositions go away"? I asked you what you were proposing. You said you wanted Calpis to simply withdraw its oppositions, which I informed you it will not do. I also advised that if you wanted to settle the oppositions quickly, you could simply withdraw your applications. You did not respond and then started your inquiry about the use of your marks on a racing boat or car, and our call abruptly terminated.

If you want settlement of the oppositions to be considered, please send me a clear written proposal so that I may take same to my client. I assure you that any proposal you send me will be given serious consideration by my client.

I note that Donna Tobin has already spoken with you about no responses being received to the discovery requests we previously served, at the address of record in your applications, which you advised is your parent's address. You informed Donna you did not receive the discovery requests (although they were not returned to us by the Postal Service). As a result, Donna re-served the requests upon you electronically, with your consent, and your "plead the fifth" responses were received.

At this point, we need to have answers to our discovery requests that are responsive. I understand that you do not know the procedural rules, but I cannot educate you as to what you must do. I will, though, refer you to Rules 26 through 37 of the Federal Rules of Civil Procedure, which relate to discovery, to give you a place where you may obtain answers.

Please let me know if you: a) will provide responsive answers; and, b) do so within a week's time, failing which I will have no alternative than to bring a motion to compel you to respond.

Yours,

Red Horowitz

EXHIBIT 11

Tobin, Donna A.

From: Horowitz, Robert B. G.
Sent: Tuesday, July 10, 2012 12:35 PM
To: Sidney Martin
Cc: Tobin, Donna A.; Joyce, Eileen; DC IP Docketing
Subject: RE: Calpis trademark oppositions, our ref.: 043523.000003

Dear Mr. Martin:

Our client has considered all three settlement options you recently presented, which in summary are:

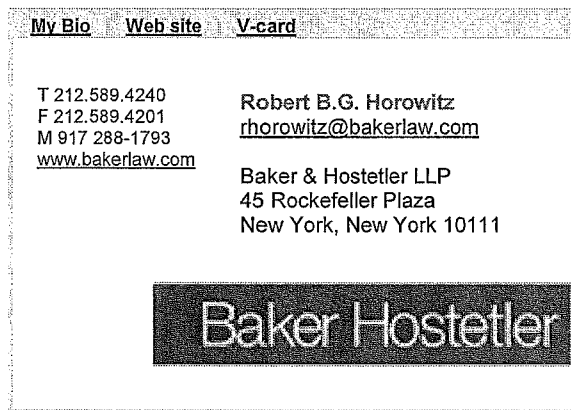
1. Our client pays you \$250 million;
2. Our client simply walks away from the proceedings; and,
3. A manufacturing and distribution agreement in Japan.

It is not interested in any of these options as they are not realistic resolutions.

Please send us appropriate responses to the discovery requests **by no later than next Tuesday**, failing which we will seek a motion to compel before the Trademark Trial and Appeal Board.

Yours,

Red Horowitz



EXHIBITS 12 A & B

Tobin, Donna A.

From: Horowitz, Robert B. G.
Sent: Tuesday, July 10, 2012 2:16 PM
To: Sidney Martin
Cc: Tobin, Donna A.; Joyce, Eileen; DC IP Docketing
Subject: RE: Calpis trademark oppositions, our ref.: 043523.000003

Dear Mr. Martin:

You tried telephoning me at or around the time of your E-mail, and I have returned your call (which you did not answer).

I do not understand your E-mail. There are Trademark Trial and Appeal Board rules that require us to communicate personally with you in certain instances. This is one of them.

I am available to take your call.

Yours,

Red Horowitz

From: Sidney Martin [mailto:calicoenergy@yahoo.com]
Sent: Tuesday, July 10, 2012 1:25 PM
To: Horowitz, Robert B. G.
Subject: Re: Calpis trademark oppositions, our ref.: 043523.000003

Exhibit 12A

Please do not Contact me personally If you have any questions please go throught the USPTO.



With best regards,

Calico Jack's LLC.

Sidney J. Martin III

1-504-355-9639

calicoenergy@yahoo.com

<http://www.calico-jacks.com/>

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in error or otherwise are not the intended recipient, please notify the sender immediately by reply e-mail.

From: "Horowitz, Robert B. G." <rhorowitz@bakerlaw.com>
To: Sidney Martin <calicoenergy@yahoo.com>
Cc: "Tobin, Donna A." <dtobin@bakerlaw.com>; "Joyce, Eileen" <ejoyce@bakerlaw.com>; DC IP Docketing <dcipdocketing@bakerlaw.com>
Sent: Tuesday, July 10, 2012 11:34 AM
Subject: RE: Calpis trademark oppositions, our ref.: 043523.000003
Dear Mr. Martin:

Our client has considered all three settlement options you recently presented, which in summary are:

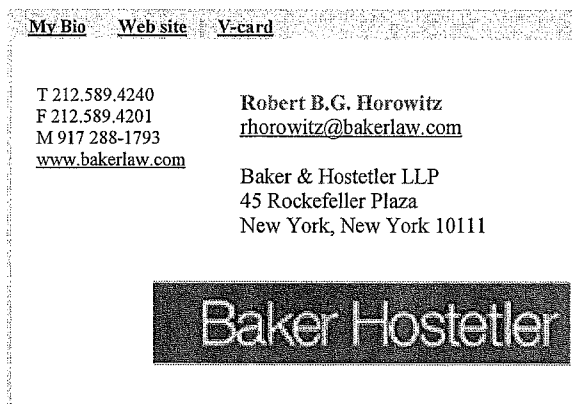
1. Our client pays you \$250 million;
2. Our client simply walks away from the proceedings; and,
3. A manufacturing and distribution agreement in Japan.

It is not interested in any of these options as they are not realistic resolutions.

Please send us appropriate responses to the discovery requests **by no later than next Tuesday**, failing which we will seek a motion to compel before the Trademark Trial and Appeal Board.

Yours,

Red Horowitz



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EXHIBITS 13 A & B

Tobin, Donna A.

From: Horowitz, Robert B. G.
Sent: Thursday, July 12, 2012 10:57 AM
To: Sidney Martin
Cc: Tobin, Donna A.; Joyce, Eileen
Subject: RE: Calpis oppositions - confidential communication pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003

Dear Mr. Martin:

Thank you for your E-mail, which is not responsive to my prior E-mails.

Unless I receive an unequivocal "yes" or "no" from you today, I will proceed on the assumption you are refusing the request for an extension of the discovery period and also will not be providing appropriate responses to the discovery requests that remain outstanding.

Yours,

Red Horowitz

From: Sidney Martin [mailto:calicoenergy@yahoo.com]
Sent: Wednesday, July 11, 2012 8:57 PM
To: Horowitz, Robert B. G.
Subject: Re: Calpis oppositions - confidential communication pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003

Exhibit 13A

<http://www.youtube.com/watch?v=wc3E0CduxxU>



CALICO®

With best regards,
Calico Jack's LLC.
1-504-264-8394
calicoenergy@yahoo.com
<http://www.calico-jacks.com/>

Sidney J. Martin III

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EXHIBITS 14 A & B

Tobin, Donna A.

From: Horowitz, Robert B. G.
Sent: Friday, July 20, 2012 1:29 PM
To: Sidney Martin
Cc: Tobin, Donna A.; Joyce, Eileen; DC IP Docketing
Subject: RE: Calpis oppositions: Offer of settlement made pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003

Exhibit 14B

Dear Mr. Martin:

I do not understand the meaning of your reply. I have left you a telephone message asking you to call me at 212 589-4240. Please do so.

Yours,

Red Horowitz

From: Sidney Martin [mailto:calicoenergy@yahoo.com]
Sent: Friday, July 20, 2012 1:06 PM
To: Horowitz, Robert B. G.
Subject: Re: Calpis oppositions: Offer of settlement made pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003

Exhibit 14A

<http://www.youtube.com/watch?v=wLlut9sqkR0>



CALICO®

With best regards,
1-504-264-8394
calicoenergy@yahoo.com
<http://www.calico-jacks.com/>

Calico Jack's LLC.

Sidney J. Martin III

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EXHIBITS 15 A & B

Tobin, Donna A.

From: Horowitz, Robert B. G.
Sent: Friday, July 20, 2012 3:12 PM
To: Sidney Martin
Cc: Tobin, Donna A.; Joyce, Eileen; DC IP Docketing
Subject: RE: Calpis oppositions: Offer of settlement made pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003

Dear Mr. Martin:

Given the foul nature of the YouTube link you sent, I take it your literal answer is "no" and am advising the client accordingly.

My sense from prior conversations we had was that you would be civil and level-headed. Obviously I was mistaken.

We are proceeding with the motion to compel and will serve a copy upon you shortly.

Yours,

Red Horowitz

From: Sidney Martin [mailto:calicoenergy@yahoo.com]
Sent: Friday, July 20, 2012 3:07 PM
To: Horowitz, Robert B. G.
Subject: Re: Calpis oppositions: Offer of settlement made pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003

Exhibit 15A

<http://www.youtube.com/watch?v=QB-eCryRofI&feature=fvwr>



CALICO®

With best regards,

Calico Jack's LLC.

Sidney J. Martin III

1-504-264-8394

calicoenergy@yahoo.com

<http://www.calico-jacks.com/>

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From: "Horowitz, Robert B. G." <rhorowitz@bakerlaw.com>
To: Sidney Martin <calicoenergy@yahoo.com>
Cc: "Tobin, Donna A." <dtobin@bakerlaw.com>; "Joyce, Eileen" <ejoyce@bakerlaw.com>; DC IP Docketing <dcipdocketing@bakerlaw.com>
Sent: Friday, July 20, 2012 12:29 PM
Subject: RE: Calpis oppositions: Offer of settlement made pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003
Dear Mr. Martin:

I do not understand the meaning of your reply. I have left you a telephone message asking you to call me at 212 589-4240. Please do so.

Yours,

Red Horowitz

From: Sidney Martin [<mailto:calicoenergy@yahoo.com>]
Sent: Friday, July 20, 2012 1:06 PM
To: Horowitz, Robert B. G.
Subject: Re: Calpis oppositions: Offer of settlement made pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003

<http://www.youtube.com/watch?v=wLlut9sqkR0>



With best regards, Calico Jack's LLC.
1-504-264-8394
calicoenergy@yahoo.com
<http://www.calico-jacks.com/>

Sidney J. Martin III

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From: "Horowitz, Robert B. G." <rhorowitz@bakerlaw.com>
To: Sidney Martin <calicoenergy@yahoo.com>

Cc: "Tobin, Donna A." <dtobin@bakerlaw.com>; "Joyce, Eileen" <ejoyce@bakerlaw.com>; DC IP Docketing <dcipdocketing@bakerlaw.com>

Sent: Friday, July 20, 2012 8:56 AM

Subject: re: Calpis oppositions: Offer of settlement made pursuant to Rule 408 Federal Rules of Evidence, our ref.: 043523.000003

Dear Mr. Martin:

I make the following settlement offer to you, which Calpis has approved. I think you will see that this proposal will give you certainty for your business use of CALICO JACK'S and Jolly Roger design for your field of interest, namely, alcoholic beverages. You will never have to worry about Calpis attacking such use (via infringement proceeding) nor your obtaining a registration for that mark. You also will put an end to dealing with legal proceedings that you admit are very difficult for you to understand and are confusing for you to deal with.

The general terms of the settlement are:

1. You abandon the two opposed applications. We will inform you about how to do this if need be.
2. You can register use and register "CALICO JACK'S" and the Jolly Roger symbol for alcoholic beverages without future challenge by Calpis. Note that this means you cannot use CALICO per se, with or without the Jolly Roger symbol.
3. You abandon your registration for "CALICO" per se for alcoholic beverages.
4. You not to use "CALICO" and to not use any marks the same as or closer to CALPICO.
5. Calpis and you agree that the use of CALPICO and CALICO JACK's and Jolly Roger design for alcoholic beverages are not confusingly similar.
6. Calpis agrees not to attack your future use of "CALICO JACK'S" and Jolly Roger design for alcoholic beverages and to not challenge your ability to register that mark for such goods nor seek cancellation of any registration you obtain for the mark.

I need your answer by Tuesday at the latest. If you will not agree, then a motion to compel will immediately be brought against you for your failure to provide appropriate responses to discovery requests served upon you long ago, and your unwillingness to try to resolve that issue (illustrated by your latest E-mails which refer me to certain videos on YouTube).

On the other hand, if you do agree to the terms then we will jointly seek, by a motion I will prepare, a suspension of proceedings in the opposition proceeding while we get settlement papers prepared for the parties agreement and execute same.

I look forward to hearing from you by Tuesday. Have a good weekend.

Yours,

Red Horowitz

<u>My Bio</u>	<u>Web site</u>	<u>V-card</u>
T 212.589.4240 F 212.589.4201 M 917 288-1793 www.bakerlaw.com	Robert B.G. Horowitz rhorowitz@bakerlaw.com Baker & Hostetler LLP 45 Rockefeller Plaza New York, New York 10111	